

Proceedings of Panel discussion on “The political economy of regulation in India- what do we need to do” and Release of Report, “Competition & Regulation in India, 2007” by Dr C. Rangarajan

Date: October 16, 2007

Place: Mumbai

Background

A Panel discussion on “The political economy of regulation in India- what do we need to do” was organized by CUTS Institute of Regulation & Competition (CIRC) with the objective of evolving a consensus on implementation of an effective regulatory regime in India. CIRC, the latest venture of CUTS International in the field of high-level training and educational programmes.

The panel discussion was chaired by Dr C. Rangarajan, Chairman, Prime Minister’s Economic Advisory Council and moderated by Pradeep S Mehta, Secretary General of CUTS International. It comprised of distinguished panellists such as Dr Rakesh Mohan, Deputy Governor of RBI; G.N. Bajpai, former Chairman of SEBI; Arvind Mayaram, Jt Secretary, Deptt of Economic Affairs, and Arun Nanda, Executive Director, Mahindra & Mahindra. The said discussion also set the stage for release of a report under a project done by CUTS International titled ‘Competition & Regulation in India, 2007’ by Dr C. Rangarajan. The report takes stock of how competition and regulation prevails across sectors in the country and comes out with recommendations as to what still needs to be done.

Mr. Mehta and Bunty Chand, The Asia Society, India Centre briefly welcomed all the panellists and guests. Mr. Mehta thanked the British High Commission, New Delhi for supporting the project. He mentioned that generally such policy related events take place in New Delhi but Mumbai, financial capital of India is starved of such vital discussions. This is the reason why CUTS planned to organise the panel discussion and release of the report in Mumbai and give an opportunity to the Mumbaikars to get a flavour of a discussion revolving around key policy issues. Mr. Mehta said that “the country requires huge amount of investments in infrastructure and our hypothesis is that we cannot attract this type of investment unless we deal with various constraints and one of the crucial factors is the need of proper and predictable regulation in place, and whether there is independent regulation or not”. The said report deals with such issues in depth.

Ms. Chand introduced the work of Asia Society in India and expressed gratitude in being offered the opportunity to collaborate for such an important event.

In his short welcome speech, Mr. Jeff Glekin, First Secretary, British Deputy High Commission, Mumbai highlighted that this report will certainly have an impact on the relevant debate of competition policy and regulation in India and benefit the policy makers and ultimately the consumers. He was very glad for the fact that the book is being released very timely with the enactment of the Competition Act, 2007 and that he was happy that the British High Commission is a part of such an important project.

Panel Discussion

Dr Rangarajan, after releasing the said report, mentioned that India is on a high growth trajectory and it is a result of the policies that we adopted since 1992-93. But market abuses still exist in our markets and that there is a common threat to improve the efficiency of the market system and the same can be done by promoting competition and regulation. He explained that market structure can provide various benefits to the society but to reap these benefits markets have to be competitive. He explained that in any society the State plays three important roles:

- as producer of marketable goods and services,
- as producer of public goods and merit goods, and,
- as regulator

In the present situation, the role of State as producer of marketable goods and services has reduced and the role of markets has increased to produce these goods and services. In this situation the role of government as regulator becomes important and it is to ensure that competitive conditions prevail in the market. This is the reason that various countries have adopted competition policy/law. He added that it is important to learn from experiences of other countries to implement our own competition policy and law.

He emphasised that the Monopolies & Restrictive Trade Practices Act (MRTPA) was set on different attributes and we have moved away from those attributes. If we are truly interested in creating competitive markets in the system then we have to undertake in depth research on how markets function in India and analyse the application of the new competition law on functioning of the markets. Further, he added that we do not need only a competition law but require a competition policy too which will help the government to regulate its own policies and practices which distort the market processes. In addition to a competition commission, we require sectoral regulators because in certain sectors there may be natural monopolies or certain sectors may be vulnerable to the markets. But creating a conducive environment for the competition commission and sectoral regulators to cohabit peacefully is an important task.

He explained that we need competitive markets to ensure competition and reap the benefits of competitive markets, we have to understand how market operates and what kind of regulation is required to attain such benefits. This is the purpose of this report and the larger purpose of CUTS Institute of Regulation & Competition (CIRC). He ended his address on the happy note that this report has highlighted various competition and regulation concerns present in India.

The first speaker, Mr Bajpai emphasized that different economic systems have approached economic development from different strategic angles and therefore the regulatory framework has also evolved from that stand point. With the opening of the economy, India has also developed sectoral regulators but in the policy approaches to these regulators there are differences which have arisen due to the time of the event and time of their birth. He gave the example of SEBI which came into existence to deal with a crisis in the stock market

while RBI and IRDA were created with different objectives. He observed that we need to bring about some kind of integration in approaches of different regulators because when they act in the market place, their action has the bearing on other sectors too.

He said that India being a democratic country, political and social issues influence the policy issues and therefore there is always a trade off between the approaches at the political level and the approaches at the regulatory level. Often those trade offs do not match and create friction in the system which is not some times conducive to the market development.

He also emphasised on the independence, autonomy and accountability of regulators. He explained that regulators should have full freedom to operate and they should be autonomous not only by legislation but also through financial allocations. Finally he mentioned that coordination among regulators is very essential and they should be accountable and answerable to the legislature and through them to the people. He said that regulation has to be evolving. It has to be phased in so as to follow the development process and not precede the process.

Mr. Arvind Mayaram expressed that we require huge amount of investments in the infrastructure sector and the private sector is expected to play a key role. But there is the issue of risk that private sector perceives in its mind which raises the question, how do we motivate the private sector including the lenders to bring that much of money into infrastructure? Unless we the reduce risk perception in their minds it is very difficult.

He said that commercial risk perception is well fenced and very low but the sovereign risk (government changing policies mid way, changing decisions, taking away certain facilities which were promised in the beginning) are still creating hesitation in the minds of the private sector. This requires somebody who is outside the government and who can regulate the behaviour of the government in the manner which will provide enough comfort to the person who is going to invest the money for 20-30 years.

He shared his concern that in certain sectors like electricity in Delhi there is a private monopoly so there is a requirement of performance standards that needs to be enforced, but who will enforce those standards is a question?. So regulation becomes very important in terms of protecting the consumers or the interest of the State in terms of how the private sector performs in a particular sector.

He added that pricing is very important and an issue remains how to discover the price that the operator would be able to charge and how to link it to performance and productivity? This issue is also needs to be looked into by the regulator closely.

He concluded that regulators are essential to discipline the bureaucrats; how they behave with the private investors and also to discipline the private investors; how they behave with the consumers. It is a very complex role and requires much deep thinking. He appreciated the efforts undertaken by CIRC to create capacity and knowledge base.

Mr. Arun Nanda emphasized that it is not correct that industry does not want regulators. He highlighted that selection of the person heading the regulatory body matters and the success/failures depends much on the quality of the person in charge. He emphasised that

problems in case of utilities like water can be solved only through public private partnership models (PPP). But water being a politically sensitive matter no one wants to touch it and the unfortunate truth is that the poor pay for the water while the rich do not.

He emphasized that regulators should take care of interests of all the stakeholders including producers and not consumer interest only. He said that the new competition law is very good but he was sceptical about its effective implementation. There is definite worry in the minds of private sector about its implementation and they think that the new competition law is another version of the old MRTPA. He concluded by saying, that we need regulators for the benefit of all the stakeholders but we need to have good, independent and autonomous regulators. He expressed his concern that we have certain problems in our society that people look at quicker ways to get benefits and those things need to be dealt with. Mr. Mehta expressed that the issues raised by Mr. Nanda are dealt with in the report in depth.

As the last speaker, Dr Rakesh Mohan reiterated the point raised by Mr. Bajpai i.e. need of independence, autonomy, and accountability of the regulators. He emphasised that there is certain degree of monopoly in different sectors as we cannot have open competition in all the sectors. In case of certain sectors we have to see, how many players can be allowed to operate and here we need regulation. But the important thing for the regulator is to ensure fair competition in the market.

He expressed that technical competence of regulator is very important but it is lacking in all the new sectoral regulators as in the existing scenario with present government salary structure it is very difficult to attract competent people. That is the reason why we attract retired bureaucrats instead of young talent.

Mr. Mehta added that this type discussions or reports we do are important as we believe that it ensure, at least, if things do not move forward they do not back slide. He said that salary is not a serious matter with the regulators; the issue is that regulators should be empowered sufficiently so as not to buckle to the pressure which will be created by entrenched interests.

Floor Discussion

After the panellists' address, a good interactive discussion took place. About twelve questions were raised by the audience to various speakers including the Chairman, which was responded to in the best manner possible. A question raised from the audience was that as the competition law becomes more discretionary how will the legal field respond to the evolving practice in this area? Mr. Rakesh Mohan in response to this question said that it is possible to actively generate training for the people who would be the adjudicators for competition law. Mr Bajpai added that there is need for judicial reforms as the judiciary is not able to comprehend the principles of regulatory reforms which seek to promote competition in the market.

Dr. Rangarajan in response to one specific query regarding the role of the regulator said, that being too specific in any act is a bad thing, therefore there are broad principles which should be followed in the act and the interpretation of those principles and the regulator should take into the account the circumstances and the situation. He added that all the sectors do

not require regulators; with some exceptions, it is required in the sectors having tendency to move towards natural monopoly. He said there are also conflicts between the competition and regulatory authorities and also between domestic and foreign competition authorities but harmonisation is needed and that is the task ahead. Mr. Mehta added that Canadian Telecom Regulatory Law has a self extinguishing character that if there is sufficient competition in the market, we do not need sectoral regulator. If there are any competition issues then the Competition Authority can deal with them. That should be the ideal structure. In response to one specific query, Mr. Mehta observed that the competition authority is going to face a huge pressure from the business community and they should be strong enough to deal with such situation. Quoting examples from other countries, he suggested that the best way for the competition authority in the beginning is to target issues of consumer interest like cartels and abuse of dominance to get a public buy-in. Once there is strong public support, the Commission can then sail smoothly.

Conclusion

Mr. Nitin Desai delivered the vote of thanks and said that we have to strengthen the discipline which brings law and economics together as things cannot be left to the lawyers alone. Further he said that three sets of players are involved in the system: consumers, producers and politicians. Consumers and producers interests are very clear and well defined but his worry is political interest. Within the governance system the support for the idea of an autonomous and independent regulator is largely there amongst the technocracy. There is no commitment to this amongst the politicians. They are not interested in an independent regulator, in fact they are not even interested in a well functioning public sector. He gave the example of water supply and city transport in Delhi where most of the tankers and blue line buses are owned by politicians. Is there a real buy-in to the idea of an efficient economy, an economy based on the rule of law and which serves the interest of the common citizen?

He concluded that by opening up the discussion of such issues in this report, he hoped that we can create a genuine public discussion on political economy of regulation in this country and not just the technicalities. The greatest challenge is to get political buy in, and the rest can take care of itself.